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In the Supreme Court of the United States

OCTOBER TERM, 1997

STATE OF SOUTH DAKOTA ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the State of South Dakota and its subdivisions may impose an excise tax upon motor vehicles owned by members of the Cheyenne River Sioux Tribe who reside on the Cheyenne River Reservation.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	8
Conclusion	17

TABLE OF AUTHORITIES

Cases:

California v. *Buzard*, 382 U.S. 386 (1966)	11
California v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987)	9
Corbin v. *Comm'r of Revenue*, 240 N.W.2d 809 (Minn. 1976)	15
McClanahan v. *Arizona State Tax Comm'n*, 411 U.S. 164 (1973)	11
McLeod v. *J.E. Dilworth Co.*, 322 U.S. 327 (1944)	15
Mescalero Apache Tribe v. *Jones*, 411 U.S. 145 (1973)	13
Miller Bros. Co. v. *Maryland*, 347 U.S. 340 (1954)	15
Moe v. *Salish & Kootenai Tribes*, 425 U.S. 463 (1976)	7, 9
Oklahoma Tax Comm'n v. *Chickasaw Nation*, 515 U.S. 450 (1995)	9, 15, 16
Oklahoma Tax Comm'n v. *Sac and Fox Nation*, 508 U.S. 114 (1993)	5, 8, 9, 10
Red Lake Band of Chippewa Indians v. *Minnesota*, 248 N.W.2d 722 (Minn. 1976)	16
Sac and Fox Nation v. *Oklahoma Tax Comm'n*, 967 F.2d 1425 (10th Cir. 1992)	12
Solem v. *Bartlett*, 465 U.S. 463 (1984)	2
South Dakota v. *Bourland*, 508 U.S. 679 (1993)	2
State v. *Dorhout*, 513 N.W.2d 390 (S.D. 1994)	15

Cases—Continued: Page

Tunica-Biloxi Tribe v. *Louisiana*, 964 F.2d 1536 (5th Cir. 1992) 7, 8, 12, 13, 14
Washington v. *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) 5, 9

Statutes:

Treaty of Fort Laramie, Apr. 29, 1868, 15 Stat. 635 2
Act of March 2, 1889, ch. 405, 25 Stat. 888 2
Minn. Stat. Ann. § 270.60 (West 1989 & Supp. 1997) 16
La. Rev. Stat. Ann. (West 1990):
§ 47:302.A(1) 12
§ 47:302.A(2) 14
Okla. Stat. Ann. tit. 68:
§ 2106 (West 1992) 10
§ 1355 (West 1992 & Supp. 1997) 10
S.D. Codified Laws Ann.:
§ 10-45 (1996 & Supp. 1997) 10, 15
§ 22-6-2 (1988 & Supp. 1997) 3
§ 32-5-5 (1989 & Supp. 1997) 3, 4
§ 32-5-6 (1989 & Supp. 1997) 5
§ 32-5-42 (1989) 3
§ 32-5B-1 (1989) 2, 7, 10, 14
§ 32-5B-2(3) (1989 & Supp. 1997) 14
§ 32-5B-2(4) (1989 & Supp. 1997) 14
§ 32-5B-4 (1989) 14

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-30) is reported at 105 F.3d 1552. The memorandum opinion and order of the district court (Pet. App. 31-43) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 17, 1997. Pet. App. 2. A petition for rehearing was denied on May 13, 1997. Pet. App. 49-50. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Great Sioux Reservation was established on April 29, 1868 by the Treaty of Fort Laramie, 15 Stat. 635, for the use and occupancy of the Sioux Nation. By the Act of March 2, 1889, ch. 405, 25 Stat. 888, Congress created the Cheyenne River Indian Reservation as a separate reservation, consisting of approximately 4,320 square miles, for the use and occupancy by the Cheyenne River Sioux Tribe, which is a federally-recognized tribe. See *South Dakota* v. *Bourland*, 508 U.S. 679 (1993). In 1908, Congress opened a large portion of the Reservation to non-Indian settlement. That opening, however, did not disestablish the Reservation. See *Solem* v. *Bartlett*, 465 U.S. 463 (1984). The Cheyenne River Indian Reservation wholly encompasses two South Dakota counties, Dewey and Ziebach.

2. Since at least 1986, the State of South Dakota has levied an excise tax on all motor vehicles owned by members of the Cheyenne River Sioux Tribe residing on the Cheyenne River Indian Reservation. The excise tax is imposed:

> at the rate of three percent on the purchase price of any motor vehicle * * * purchased or acquired for use on the streets and highways of this state and required to be registered under the laws of this state. This tax shall be in lieu of any tax levied by chapters 10-45 and 10-46 on the sales of such vehicles. Failure to pay the full amount of excise tax is a Class 1 misdemeanor.

S.D. Codified Laws Ann. § 32-5B-1 (1989).

Until enjoined by the federal courts from doing so, the State required all tribal members residing on

their reservations in South Dakota to have South Dakota license plates when they operated their vehicles off-reservation. Payment of the excise tax was required before the lawful registration of motor vehicles in South Dakota, issuance of South Dakota license plates, and issuance of a certificate of title.[1] Because the excise tax is collected by the county in which the vehicle owner resides, in the case of the Cheyenne River Sioux Tribe, the tax was collected from Indians residing on the Reservation and was enforceable by criminal penalties.

S.D. Codified Laws Ann. § 22-6-2 (1988 & Supp. 1997). State law provides for issuance of state license plates to certain entities, including Indian Tribes that own vehicles, without payment of the excise tax. See S.D. Codified Laws Ann. § 32-5-42 (1989). For individual Indians, however, the State provided no exemption from the tax for any reason. The State required payment of the excise tax by all tribal members owning vehicles and residing on reservations, without regard to the site of purchase and notwithstanding that there are retail car dealerships located on the Cheyenne River Indian Reservation. New residents of the State are required to pay the excise tax irrespective of when they purchased the car or whether that purchase was made outside the State.

Tribal law enacted by the Tribal Council in 1987 required that motor vehicles operated on the Reservation "bear valid South Dakota motor vehicle li-

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[1] The State also requires payment of a registration and licensing fee as a prerequisite to issuance of license plates. S.D. Codified Laws Ann. § 32-5-5 (1989 & Supp. 1997) (reproduced at note 4, *infra*).

cense plates." Pet. App. 55. That resolution by the Cheyenne River Tribal Council did not, however, require payment of state motor vehicle taxes.[2] To the contrary, the Tribal Council "consistently protested the imposition of state motor vehicle taxes on its members" as a condition of receiving state license plates. *Id.* at 19.

3. On September 3, 1992, the United States filed this action on behalf of the Cheyenne River Sioux Tribe and its members to challenge the validity of the State's levy of the excise tax on motor vehicles owned by members of the Tribe residing on the Cheyenne River Indian Reservation.[3] The United States also challenged the State's assessment of a registration and licensing fee pursuant to S.D. Codified Laws Ann. § 32-5-5 (1989 & Supp. 1997) on the vehicles owned by tribal members residing on the Reservation.[4] The

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[2] Contrary to the State's assertion (Pet. 2, 11), the Cheyenne River Sioux Tribe did not thereby require payment of state taxes. As the court of appeals found (Pet. App. 19), the Tribal Council resolutions on which the State relies for that assertion did not address the payment of state motor vehicle taxes or suggest that collection of such taxes from tribal members was valid.

[3] The defendants in this case are the State of South Dakota and Gary Viken, State Secretary of Revenue; Dewey County, South Dakota, and John Alley, County Treasurer; and Ziebach County, South Dakota, and Virginia Hertel, County Treasurer.

[4] The statute imposing a registration fee, S.D. Codified Laws Ann. § 32-5-5 (1989 & Supp. 1997), provides:

> **Registration fee based on weight - Certification of correct weight.** Subject to the provisions of §§ 32-5-17 to 32-5-45, inclusive, license fees and compensation for use of the highways, fees shall be based, except as otherwise specifically provided, upon manufacturers' weights, including accessories. If the department determines the

Cheyenne River Sioux Tribe intervened as a plaintiff. The parties filed cross motions for summary judgment on the validity of the excise tax and the registration fee.

On February 21, 1995, the district court held that the State could not require Cheyenne River Sioux tribal members residing on their Reservation to pay the excise tax as a condition for obtaining state license plates, because in those circumstances the excise tax impermissibly taxed Indians in Indian country. Pet. App. 35-36. The court concluded that the excise tax is "essentially the same type of [motor vehicle excise] tax" on reservation Indians that was prohibited by this Court's decisions in *Oklahoma Tax Commission* v. *Sac and Fox Nation*, 508 U.S. 114 (1993), and *Washington* v. *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). Pet. App. 36. The district court held that the excise tax is not a "sales tax," explaining that it is not assessed against all persons purchasing a motor vehicle in South Dakota, but rather is assessed whenever an owner seeks to obtain a South Dakota motor vehicle title. *Ibid.*

The district court ruled against the United States and Tribe on other issues. It held that the registra-

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actual dry weight of any model vehicle with accessories to be at variance with the manufacturers' weight, the department shall certify the correct weight to be used in determining fees.

These fees shall be paid annually to the county treasurer, and shall be as provided by §§ 32-5-6 to 32-5-16, inclusive.

The fees vary, and are imposed every year at the time the owner obtains license plates or renewal tags. S.D. Codified Laws Ann. § 32-5-6 (1989 & Supp. 1997).

tion and licensing fee could be assessed against tribal members who reside on the Reservation. Although the parties had not addressed remedial issues, the district court, *sua sponte*, decided those issues. With respect to the excise tax claim, on which the United States and Tribe had prevailed, the district court granted only declaratory relief, declining to allow recovery of excise taxes unlawfully collected from tribal members since 1986. The court reasoned that to allow such recovery would be an improper retroactive application of law.

4. With one judge dissenting in part, the court of appeals affirmed in part, and reversed and remanded in part.[5] The court held that the motor vehicle excise tax may not be imposed on tribal members residing on the Reservation because it "essentially operates as a tax on the ownership of a motor vehicle" and "the ownership of a vehicle is the sort of on-reservation activity that a state is not permitted to tax without express Congressional authorization." Pet. App. 13. In so concluding, the court rejected for a number of reasons the State's alternative argument that the excise tax is a sales tax on non-reservation transactions and, therefore, permissibly levied on off-reservation sales.[6] First, the court explained that the

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[5] On appeal, the United States' suit on behalf of the Cheyenne River Sioux Tribe was consolidated with a suit brought by the Rosebud Sioux Indian Tribe seeking to enjoin collection of the excise tax and registration fee from Indians residing on the Rosebud Sioux Reservation.

[6] In the courts below, the State principally argued that the excise tax was a "user fee" that could permissibly be levied on all vehicles owned by tribal members and driven off-reservation. The State alternatively contended that the excise tax is a "sales" tax. A sales tax could not be levied on vehicles that

statute itself speaks of levying an excise tax "in lieu of" any sales or use tax on the value of any motor vehicle "purchased or acquired for use" in the State. *Id.* at 9 (quoting S.D. Codified Laws Ann. § 32-5B-1 (1989)). Second, unlike the state sales tax, the excise tax is not imposed on the retailer or at the time of sale. *Ibid.* Third, the amount of the tax may be determined either by the actual consideration paid or by the actual value of the vehicle. *Id.* at 10. Fourth, although the excise tax might resemble a tax on a sales transaction in some instances, it does not in other circumstances. *Ibid.* For example, the "tax does not apply to all motor vehicle sales in the state, but only to those resulting in ownership by a South Dakota resident." *Id.* at 10-11. Also, unlike a sales tax, the excise tax applies to vehicles purchased by state residents outside of the State and to certain vehicles not recently purchased, but recently brought into the State. *Id.* at 9 n.8, 10-11. For those reasons, the court concluded that "the tax more obviously relates to the ownership of the vehicle as property rather than the sales transaction itself." *Id.* at 10.

In holding that the tax may not be lawfully assessed, the court distinguished *Tunica-Biloxi Tribe* v. *Louisiana*, 964 F.2d 1536 (5th Cir. 1992), explaining that the South Dakota excise tax differs from the retail sales tax upheld in *Tunica-Biloxi Tribe*. Pet. App. 10-11. The court therefore rejected the dissent's contention that it had created an inter-circuit conflict with the Fifth Circuit. The court pointed out as well that the Fifth Circuit "did not have the benefit of" (Pet. App. 12 n.10) this Court's intervening decision

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tribal members purchased or acquired on-reservation. See *Moe* v. *Salish & Kootenai Tribes*, 425 U.S. 463, 475-481 (1976).

in *Oklahoma Tax Commission* v. *Sac and Fox Nation*, 508 U.S. 114 (1993), which was decided one year after *Tunica-Biloxi Tribe*.

The court of appeals also affirmed the district court's holding that the registration and licensing fee may lawfully be imposed on tribal members. The court reversed, however, the district court's denial of monetary relief to compensate for past payments of the excise tax by tribal members, holding that the district court's rationale for denying such relief was unsound. Pet. App. 17-20. The court therefore remanded for further development of the record and the refund issue and for a new ruling on whether monetary relief for wrongful collection of the excise tax is appropriate. *Id.* at 20.

Judge Ross dissented in part. Pet. App. 23-30. He concurred "in the majority opinion to the extent that it concludes the State of South Dakota has the authority to impose an annual motor vehicle registration fee on Native Americans who live within the boundaries of a reservation." *Id.* at 23. Judge Ross was of the view, however, that the excise tax is a "sales tax levied on the sale of motor vehicles, and as such is a valid state tax on a non-reservation transaction." *Id.* at 23, 26-27. *Id.* at 23, 26-27.

ARGUMENT

Petitioner argues that the courts below erred in invalidating the state motor vehicle excise tax as an impermissible tax levied against tribal members residing on an Indian reservation. The court of appeals' decision on that issue is correct and does not conflict with any decision of this Court or any other court of appeals. Further review, therefore, is not warranted.

1. In the special area of state taxation of Indian Tribes and tribal members, this Court has established a per se rule that, absent congressional authorization, a State may not tax Indian Tribes or the property or activities of individual Indians within Indian Country. *E.g.*, *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450 (1995); *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 215 n.17 (1987). This Court has applied that rule to taxes on motor vehicles in a trilogy of cases: *Oklahoma Tax Comm'n* v. *Sac and Fox Nation*, 508 U.S. 114 (1993); *Washington* v. *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980); and *Moe* v. *Salish and Kootenai Tribes*, 425 U.S. 463 (1976). *Moe* invalidated a state property tax imposed on motor vehicles owned by tribal members residing on a reservation. *Colville* invalidated excise taxes, assessed on the basis of a vehicle's market value, which the state statute characterized as taxing the use in the State of motor vehicles, mobile homes, campers, and travel trailers. 447 U.S. at 143, 162. *Sac and Fox Nation* likewise invalidated a state excise tax as well as a registration fee on motor vehicles. In the latter two cases, this Court rejected arguments by the respective States that their excise taxes were permissible because they only taxed use of a vehicle outside Indian country. The Court explained that the tax schemes were fatally flawed for failing to apportion the amount of the tax to the amount of actual use outside Indian country. *Colville*, 447 U.S. at 163-164; *Sac and Fox Nation*, 508 U.S. at 128.

Significantly, the tax struck down in *Sac and Fox Nation* was an excise tax with characteristics closely analogous to the South Dakota tax at issue here—a one-time tax based on the value of vehicles that are

owned by tribal members and are used both inside and outside Indian country. In *Sac and Fox Nation*, this Court rejected the State's contention that the tax was valid because it "resemble[d] a sales tax," observing that, by its terms, the excise tax is imposed on "both the transfer and the use of any vehicle." 508 U.S. at 126. The Court therefore concluded that the excise tax was sufficiently similar to the excise and property taxes held preempted in *Colville* and *Moe* that the same result should obtain. *Id.* at 127.

Petitioner asserts (Pet. 22) that this Court's statement in *Sac and Fox Nation* that "the excise tax and registration fee are imposed in addition to a sales tax," 508 U.S. at 127, means that the decision turned on the fact that vehicle owners in Oklahoma were required to pay both an excise tax and a sales tax. Petitioner acknowledges, however, that it is unable to find any support in the Oklahoma statutes for that interpretation. See Pet. 23 n.16; see generally Okla. Stat. Ann. tit. 68, § 2106 (West 1992) (motor vehicle excise tax is "in lieu of all other taxes," including general sales tax, with exception of registration fee); *id.* § 1355 (West 1992 & Supp. 1997) (sale of motor vehicles is exempted from sales tax where "the Oklahoma Motor Vehicle Excise Tax * * * has been, or will be paid").

Indeed, South Dakota's excise tax reads exactly like the Oklahoma excise tax held invalid in *Sac and Fox Nation*. South Dakota has a general sales tax statute, S.D. Codified Laws Ann. § 10-45 (1996 & Supp. 1997), but that tax need not be paid on sales of motor vehicles; rather, like Oklahoma, South Dakota imposes an excise tax on motor vehicles "in lieu of" that general sales tax. S.D. Codified Laws Ann. § 32-5B-1 (1989). Moreover, South Dakota, like Oklahoma, does

not limit the excise tax to purchases, as would ordinarily be the case with a sales tax. Non-sale transfers of title and first registrations in the State are subject to the excise tax in both States.[7]

Petitioner further contends (Pet. 23-24) that the holding in *Sac and Fox Nation* turned on unique facts related to the manner of collection—allegedly discriminatory treatment by the Oklahoma Tax Commission in requiring purchasers of vehicles from tribal members to pay the excise tax that had not been collected from the tribal members, as contrasted with purchasers of vehicles from non-Indians who did not have to pay the excise tax because the tax had already been paid by the former owner. Petitioner argues (Pet. 24) that because it collected the excise tax directly from tribal members, it did not discriminate against those members in the way that Oklahoma had. Nothing in this Court's decision in *Sac and Fox Nation* supports petitioner's suggestion that the outcome turned on Oklahoma's method of tax collec-

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[7] Petitioner also argues (Pet. 22) that its excise tax is materially different because South Dakota dedicates revenues to highway purposes whereas revenue from Oklahoma's tax funded general governmental functions. That distinction, however, provides no reason to treat South Dakota's excise tax as a sales tax. The dedication for highway purposes cannot serve to make its exaction against tribal members permissible. See *California* v. *Buzard*, 382 U.S. 386, 394 n.8, 395 (1966) (State could not require United States service members to pay registration fee on motor vehicles even though revenues were dedicated to highway purposes because fee served primarily a revenue interest, "narrower in purpose but no different in kind from taxes raised to defray the general expenses of government"); cf. *McClanahan* v. *Arizona State Tax Comm'n*, 411 U.S. 164, 173 n.12 (1973) (State's conferral of benefits on reservation Indians does not affect Indians' tax-exempt status).

tion. Moreover, the discussion in the court of appeals' decision in *Sac and Fox Nation*, on which South Dakota relies for this theory (Pet. 24), addressed the question whether the excise tax was a tax on tribal members, rather than on non-Indian purchasers. *Sac and Fox Nation* v. *Oklahoma Tax Comm'n*, 967 F.2d 1425, 1430 (10th Cir. 1992). In other words, Oklahoma's collection practice was relevant to whether the incidence of the tax in fact fell on tribal members and their property, but that question is not posed here because South Dakota's excise tax concededly falls on tribal members.

2. Petitioner contends (Pet. 16-21) that the court of appeals' decision conflicts with the holding in *Tunica-Biloxi Tribe* v. *Louisiana*, 964 F.2d 1536 (5th Cir. 1992), a decision rendered before *Sac and Fox Nation*. Petitioner bases its assertion of a conflict on the contention (Pet. 19) that the South Dakota excise tax yields the same results as the Louisiana tax scheme upheld in *Tunica-Biloxi Tribe*. As the court below concluded, that contention is incorrect.

a. The statute at issue in *Tunica-Biloxi Tribe* was the general retail sales tax that Louisiana imposes on all retail, in-state purchases of goods, including motor vehicles. La. Rev. Stat. Ann. § 47:302.A(1) (West 1990). The Fifth Circuit held that a tribal government could be required to pay the retail sales tax when it purchased a new motor vehicle from a car dealership located off-reservation, because the taxable event occurred there. 964 F.2d at 1540-1541. The Tunica-Biloxi Tribe court stated: "[I]n the sales tax context, the ultimate destination of the property is not crucial, as the sales transaction—the taxable event—provides the nexus with the state." *Id.* at 1541.

Unlike the Louisiana sales tax at issue in *Tunica-Biloxi Tribe*, South Dakota's excise tax is not denominated as a sales tax and does not operate as one. Under the South Dakota statute, the taxable event is transfer of title to a state resident and use in the State. "It has long been recognized that 'use' is among the 'bundle of privileges that make up property or ownership' of property and, in this sense at least, a tax upon 'use' is a tax upon the property itself." *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 158 (1973). The South Dakota excise tax by its terms is a tax on the ownership and use of vehicles and, therefore, is a tax upon the property itself.

Petitioner's characterization of its excise tax as a sales tax first appeared in this litigation and is contrary to the State's prior characterization and enforcement of the tax. For example, the State has never allowed tribal members any exemption from payment of the excise tax for vehicles acquired on-reservation or out-of-state, despite its recognition that a State legally may not impose a sales tax for on-reservation purchases by tribal members.[8]

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[8] The statement in the dissent below that "[i]t is clear that all of the sales occur outside the reservation," Pet. App. 24, is unsupported by any record citation. We are informed that there are retail car dealerships located on the Cheyenne River Reservation as well as other reservations in South Dakota; furthermore, used cars are undoubtedly purchased from private persons on-reservation. Had the State regarded the excise tax as a "sales" tax, it would, by its theory, have been obliged to exempt on-reservation sales. It had not done so precisely because the excise tax is not a sales tax and had not been regarded as one by the State.

Under a cooperative agreement, the State collects all state and tribal sales taxes and remits to the Tribe a percentage of the revenues, in recognition of the fact that purchases by

b. Petitioner's claim that its excise tax operates exactly the same as the tax upheld in *Tunica-Biloxi Tribe* is based on an inapt comparison of the practical revenue results of its excise tax with Louisiana's overall scheme for taxing non-Indian-owned motor vehicles. South Dakota asserts that because, in a statutory provision separate from the general retail sales tax, Louisiana imposes a "use tax" on motor vehicles and other goods purchased out-of-state and later brought into the State for use, see La. Rev. Stat. Ann. § 47:302.A(2) (West 1990), the Louisiana tax scheme as a whole yields the same revenue as South Dakota's excise tax. Even if that were true, it is irrelevant. The Fifth Circuit addressed only the question whether a general retail sales tax provision could permissibly be applied to an off-reservation purchase by an Indian Tribe.[9] The Fifth Circuit indicated that the same result might not obtain for the separate statute imposing a use tax. See 964 F.2d at 1540-1541. *Tunica-Biloxi Tribe* did not address the validity of a tax, like South Dakota's excise tax, that is not denominated a sales tax, is broader in scope than the Louisiana sales tax, and fails to make the distinction drawn by the State between a sales and a use tax.

Indians within Indian country are exempt from state taxation. However, the State refused the Tribe's proposals to have a similar arrangement for motor vehicle excise taxes. Tribe's C.A. App., Tab 34.

[9] Louisiana's sale tax is assessed on the sales price of items sold. *Tunica-Biloxi Tribe*, 964 F.2d at 1540. South Dakota taxes the "value" of vehicles and in that way subjects transfers by gift, with certain exceptions (see S.D. Codified Laws Ann. § 32-5B-2(3) and (4) (1989 & Supp. 1997)), to the tax. See S.D. Codified Laws Ann. §§ 32-5B-1, 32-5B-4 (1989).

South Dakota has a general retail sales tax statute like the statute at issue in *Tunica-Biloxi Tribe*. However, South Dakota's sales tax statute, S.D. Codified Laws Ann. § 10-45 (1996 & Supp. 1997), is not at issue here because it is not applicable to motor vehicles. The court below thus correctly concluded that "[s]ince the characteristics of the South Dakota tax differ from the Louisiana tax, the outcome here is not inconsistent with Tunica." Pet. App. 11.

c. This Court has rejected the notion implicit in South Dakota's argument (Pet. 19-20) that a resemblance between the revenue results of different taxes makes them legally equivalent. See, *e.g.*, *McLeod* v. *J.E. Dilworth Co.*, 322 U.S. 327, 331 (1944) ("Though sales and use taxes may secure the same revenues and serve complementary purposes, they are, as we have indicated, taxes on different transactions and for different opportunities afforded by a State."); accord *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340, 343 (1954).[10] Thus, the legal underpinnings and validity of each are distinct. *McLeod*, 322 U.S. at 330 ("A sales tax is a tax on the freedom to purchase * * *. A use tax is a tax on the enjoyment of that which was purchased."); *Miller Bros. Co.*, 347 U.S. at 344. Contrary to petitioner's assumption (Pet. 19), the Louisiana and South Dakota taxing schemes are written differently and cannot be equated in terms of their legal validity. Compare *Chickasaw Nation*, 515 U.S. at 457-460. The decision by the court below rests on a reasonable

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[10] See also *State* v. *Dorhout*, 513 N.W.2d 390, 392-393 (S.D. 1994) (sales tax and use tax are distinct assessments on different transactions); *Corbin* v. *Comm'r of Revenue*, 240 N.W.2d 809 (Minn. 1976) (use tax statutes and sales tax statutes are not interchangeable).

interpretation of the South Dakota statute as falling within the category of excise taxes that (unlike the sales tax applied off-reservation in *Tunica*) a State may not impose. There is no reason for this Court to disturb that ruling. See *Chickasaw Nation*, 515 U.S. at 461-462.

3. Petitioner argues (Pet. 29) that the court of appeals' decision has impact beyond South Dakota because South Dakota's tax scheme functions the same as that of other States within the Eighth Circuit. As support for that contention, petitioner relies solely on assertions made in the dissent regarding information not contained in the record in this case. If the dissent is correct, although there is reason to think it is not,[11] it would be appropriate for this Court to allow further percolation of the issue in the lower courts. If the issue is as significant as petitioner asserts, it will recur and the Court will have the benefit of decisions from the Eighth Circuit as to other state statutes and from other circuits. Because the decision below is the first to address the issue after *Sac and Fox Nation*, and because it is correct, review is not warranted in this case.

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[11] Compare Pet. App. 25-26 with *Red Lake Band of Chippewa Indians* v. *Minnesota*, 248 N.W.2d 722 (Minn. 1976) (recognizing validity of Indian Tribes' issuance of tribal license plates, which obviates the need for state registration of motor vehicles) and Minn. Stat. Ann. § 270.60 (West 1989 & Supp. 1997) (authorizing agreements between Tribes and State regarding refunds of taxes collected from tribal members, including motor vehicle excise taxes).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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